IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 264 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUMATIBEN SADASHIV DESHMUKH

Versus

MOHANBHAI DAHYABHAI GANDHI

Appearance:

1. Civil Revision Application No. 264 of 2004

MR DHARMESH V SHAH for Petitioner No. 1

MR AMIT P PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/03/2005

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 31/07/2004 passed by the learned Civil Judge (S.D.), Navsari, in Regular Execution Application No.19 of 2001 below exh.69, whereby the said application was rejected.

2.0 The petitioner herein, original defendant, had preferred a suit being Regular Civil Suit No.78 of 1985 for acquiring possession of the property situated at Ward No.1 of City Navsari. The said suit was partly decreed by order dated 10/06/1992 in favour of the respondent and the petitioner was directed to hand over possession of the "Katariya portion" of the said property to the respondent herein.

2.1 The petitioner preferred appeal being Civil Appeal No.43 of 1992 before the District Court, Navsari against the said decree. The learned District Judge, Navsari by order dated 30/04/2001 rejected the said appeal preferred by the petitioner. Against the said order, the petitioner preferred revision being Civil Revision Application No.939 of 2001 before this Court which came to be rejected by order dated 26th & 27th February, 2004.

2.2 Feeling aggrieved by the said order, the petitioner preferred Special Leave to Appeal before the Hon'ble the Supreme Court which was dismissed by order dated 08/07/2004, thereby confirming the order of the trial Court, but with a liberty to move an application before the High Court for seeking time to vacate the premises in question.

2.3 Pursuant to the above, the respondent initiated execution proceedings against the petitioner by way of Regular Execution Application No.19 of 2001. In the said execution proceedings, the learned Civil Judge (S.D.), Navsari, issued warrant for taking over possession of the Katariya portion vide order dated 07/07/2004.

2.4 It is the say of the petitioner that when the bailiff went to take possession of the suit property the respondent herein compelled the bailiff to take possession of the entire suit property though only katariya portion was to be handed over as per the decree passed in the original suit.

2.5 The petitioner preferred application at exh.69 raising objections and with a specific case that the petitioner had no objection if the possession of the katariya portion was handed over to the respondent as per the original decree. The learned Civil Judge (S.D.), Navsari by order dated 31/07/2004 rejected the said application preferred by the petitioner. Hence, this application.

3.0 Mr.D V Shah learned advocate for the petitioner

has submitted that the decree passed by the trial Court was beyond the prayer claimed by the original plaintiff, i.e. the respondent herein. He has submitted that there was no decree with respect to other portions of the suit property, except the Katariya portion of the property; and, that, even in the warrant issued by the trial Court, only the katariya portion of the suit property was mentioned. He has, therefore, submitted that the lower Court has erred in holding that the respondent herein was entitled for the possession of the entire suit property.

3.1 Mr.Shah learned advocate for the petitioner has relied upon a decision of this Court in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & ors. reported in 1971 (12) G.L.R., pg.55, wherein it has been held that a Court executing a decree cannot go behind the decree between the parties or their representatives and that it must take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. It was further held that until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous was still binding between the parties.

4.0 I have heard learned counsel for the parties and have perused the relevant documents on record. It is well settled that an Executing Court cannot travel beyond the decree. The Appellate Court while confirming the order dated 15/06/1992 passed by the learned Civil Judge (S.D.), Navsari, in R.C.S.No.78 of 1985, had made it clear that the impugned order of the trial Court passed in the aforesaid suit in respect of refusing to pass decree under the provisions of Section 13(1)(l) of the Rent Act has been quashed and that the counter memorandum of objections were allowed. Decree for eviction of the suit premises was also passed under the provisions of Section 13(1)(l) of the said Act.

4.1 The impugned order of the Appellate Court was confirmed by this Court by order dated 26/02/2004 passed in C.R.A.No.939 of 2001. While disposing of the said application, this Court had observed that the said portion, i.e the katariya portion of the suit property, could not satisfy the needs of the petitioner and that it was not possible to divide the said portion from the rest of the property. Hence, it is clear that the impugned decree was with respect to the whole property in question. The said order passed by this Court was confirmed by the Hon'ble the Supreme Court by order dated 08/07/2004 passed in Special Leave to Appeal (Civil) No.10202 of 2004.

4.2 The objections raised by the petitioner has been rightly rejected by the Executing Court, and therefore, the decision relied upon by the learned advocate for the petitioner cannot come to the rescue of the petitioner. On the contrary, as held by the Hon'ble the Apex Court, an Executing Court can execute a decree that has been confirmed by both the Apex Court and the Revisional Court. Hence, I find no illegality in the impugned order passed by the trial Court. This revision application is devoid of any merits and deserves to be dismissed.

5.0 While dismissing the Appeal preferred by the petitioner, the Hon'ble the Apex Court had granted liberty to the petitioner to apply for time before the High Court for vacating the premises in question. Though the aforesaid liberty was granted to the petitioner, the petitioner has not preferred any application for seeking time for vacating the premises in question. On the contrary, the petitioner has raised an objection against the non-compliance of the Apex Court's order. Looking to the fact that the petitioner is an old lady, this Court is not imposing any cost on her; otherwise, this litigation is nothing but a complete misuse of Court process.

6.0 In above view of the matter, this revision application is rejected. The Executing Court is directed to proceed with the hearing of Regular Execution Application No.19 of 2001 from the stage from where it was left on account of this proceeding before this Court. Rule is discharged. No order as to costs. Interim relief granted earlier stands vacated.

7.0 At this stage, Mr.Shah learned advocate for the petitioner requests for time for approaching the Hon'ble the Apex Court. The request of Mr.Shah cannot be accepted since the said request has been made not for vacating the premises in question but for approaching the Hon'ble the Apex Court. The said request is rejected. Even, if the petitioner would have sought time for vacating the premises in question, as per the liberty granted to him by the Hon'ble the Apex Court, this Court could not have granted the same, since the petitioner has made such a request when this Court is inclined to dismiss his application and that to after six months from the date of the Apex Courts' order. This is not a good gesture on the part of the petitioner who is trying to take advantage of the legal proceedings. Hence, the said request of Mr.Shah is rejected.

(K. S. Jhaveri, J.)

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